

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANA PORTILLO,
Plaintiff,

v.

DLJ MORTGAGE CAPITAL, INC.,
Defendant.

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CIVIL ACTION H-13-3679

ORDER

Pending before the court is defendant DLJ Mortgage Capital, Inc.'s ("DLJ") motion to dismiss. Dkt. 10. Plaintiff asserts four claims for legal and equitable relief, all of which are based on alleged violations of § 50(a)(6) of the Texas Constitution relating to home equity loans. Dkt. 1, Ex. C (original complaint). However, the Fifth Circuit recently ruled that such claims are subject to Texas's four-year statute of limitations, and they accrue at the time of the loan's closing. *Priester v. JP Morgan Chase Bank, N.A.*, 708 F.3d 667, 674–76 (5th Cir. 2013). Plaintiff admits in her petition that the loan closed on or about July 21, 2006, more than seven years before the petition was filed. While plaintiff attempts to avoid the time bar by arguing that *Priester* wrongly interpreted Texas law, this court is bound by *Priester*'s reasoning unless and until a subsequent Texas state court decision or constitutional amendment supersedes that analysis. That has not occurred, and consistent with this court's previous opinion in *Prutzman v. Wells Fargo Bank, N.A.*, 2013 WL 4063309, at **2–4 (S.D. Tex. Aug. 12, 2013), DLJ's motion (Dkt. 10) is **GRANTED**, and plaintiff's claims are

DISMISSED WITH PREJUDICE.

Signed at Houston, Texas on January 23, 2014.

Gray H. Miller
United States District Judge